
**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

STEFFEN MAUTE, derivatively on behalf of
MERIT MEDICAL SYSTEMS, INC.,

Plaintiff,

vs.

FRED P. LAMPROPOULOS; RAUL
PARRA; A. SCOTT ANDERSON; JILL D.
ANDERSON; THOMAS J. GUNDERSON;
F. ANN MILLNER; LYNNE N. WARD; and
JUSTIN F. LAMPROPOULOS,

Defendants,

– and –

MERIT MEDICAL SYSTEMS, INC., a Utah
corporation,

Nominal Defendant.

**ORDER PRELIMINARILY
APPROVING DERIVATIVE
SETTLEMENT AND PROVIDING FOR
NOTICE**

Case No. 2:21-cv-00346-RJS-JCB

Chief District Judge Robert J. Shelby

Magistrate Judge Jared C. Bennett

Before the court is Plaintiff Steffen Maute's Unopposed Motion for Preliminary Approval of Derivative Settlement.¹ The Parties seek an order under Federal Rule of Civil Procedure 23.1:

- (i) preliminarily approving the Settlement of this Action in accordance with the Stipulation and Agreement of Settlement fully executed on August 23, 2022 (Stipulation), which, together with the exhibits annexed thereto, sets forth the terms and conditions for the proposed Settlement and dismissal of the Action with prejudice, upon the terms and conditions set forth therein; and,
- (ii) approving the form and content of the Notice to Current Merit Stockholders (Notice) to be posted on the Investor Relations portion of Nominal Defendant Merit Medical System

¹ Dkt. 26.

Inc.'s (Merit) website, and approving the form and content of the Summary Notice to Current Merit Stockholders (Summary Notice) to be filed with the SEC via a Current Report on Form 8-K and to be published via a press release.

WHEREAS, all capitalized terms contained herein shall have the same meanings as set forth in the Stipulation (in addition to those capitalized terms defined herein); and

WHEREAS, the court has read and considered the Stipulation and the exhibits annexed thereto.

IT IS HEREBY ORDERED:

1. The court does preliminarily approve, subject to further consideration at the Settlement Hearing described below, the Stipulation and the Settlement set forth therein, including the terms and conditions for settlement and dismissal with prejudice the Action.

2. A hearing (the Settlement Hearing) shall be held before the court on February 16, 2023 at 3:30 p.m. to determine: (i) whether the terms and conditions of the Settlement set forth in the Stipulation are fair, reasonable, and adequate to Merit and Current Merit Stockholders and should be finally approved by the court; (ii) whether a Final Order and Judgment approving the Settlement, as provided for in the Stipulation and attached thereto as Exhibit E, should be entered; and (iii) whether Plaintiff's Counsel's agreed-to Fee and Expense Award should be finally approved.

3. The court approves, as to form and content, the Notice attached as Exhibit C and the Summary Notice attached as Exhibit D to the Stipulation, and finds that the posting of such Notice and Summary Notice substantially in the manner and form set forth in this Order, meets the requirements of Federal Rule of Civil Procedure 23.1 and due process, and is reasonable notice under the circumstances and shall constitute due and sufficient notice to all Persons entitled

thereto.

4. Not later than ten (10) business days following entry of this Order, Merit shall cause the Notice to be posted on the Investor Relations portion of Merit's website and the Summary Notice to be filed with the SEC via a Current Report on Form 8-K and published one time via a press release issued by Merit.

5. All papers in support of the Settlement, the Fee and Expense Award, and the Incentive Award shall be filed with the court and served at least twenty-one (21) calendar days prior to the Settlement Hearing and any reply papers shall be filed with the court at least seven (7) days prior to the Settlement Hearing.

6. Any Current Merit Stockholder may object and/or appear and show cause, if he, she, or it has any concern, why the Settlement should not be finally approved as fair, reasonable, and adequate, or why the Final Order and Judgment should not be entered thereon, or why the Fee and Expense Award or Incentive Award should not be finally approved, provided, however, unless otherwise ordered by the court, no Current Merit Stockholder shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Final Order and Judgment to be entered thereon approving the same, or the Fee and Expense Award or Incentive Award, unless that Stockholder has, *at least fourteen (14) days prior to the Settlement Hearing*: (1) filed with the Clerk of the Court a written objection to the Settlement setting forth: (a) the nature of the objection; (b) proof of ownership of Merit common stock through the date of the Settlement Hearing, including the number of shares of Merit common stock and the date of purchase; and (c) any documentation in support of such objection; and (2) if a Current Merit Stockholder intends to appear and requests to be heard at the Settlement Hearing, such Stockholder must have, in addition to the requirements of (1) above, filed with the Clerk of the Court: (a) a

written notice of such Stockholder's intention to appear; (b) a statement that indicates the basis for such appearance; and (c) a statement identifying any exhibits the Stockholder intends to introduce and any witnesses the Stockholder intends to call at the Settlement Hearing (including a statement as to the subjects of their testimony). If a Current Merit Stockholder files a written objection and/or written notice of intent to appear, such Stockholder must also simultaneously serve copies of such notice, proof, statement, and documentation, together with copies of any other papers or briefs such Stockholder files with the court (either by hand delivery or by first class mail) upon each of the following:

Rusty E. Glenn
SHUMAN, GLENN & STECKER
600 17th Street, Ste. 2800 South,
Denver, CO 80202
Counsel for Plaintiff

Robert S. Clark
PARR BROWN GEE & LOVELESS
101 South 200 East
Salt Lake City, UT 84111
Counsel for the Individual Defendants

Paul R. Bessette
KING & SPALDING LLP
500 West 2nd Street, Suite 1800
Austin, TX 78701
Counsel for Nominal Defendant Merit Medical Systems, Inc.

Any Current Merit Stockholder who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement, the Fee and Expense Award, or the Incentive Award as incorporated in the Stipulation, unless otherwise ordered by the court, but shall otherwise be bound by the Final Order and Judgment to be entered and the releases to be given.

7. At least ten (10) business days prior to the Settlement Hearing, Defendants'

Counsel shall serve on counsel in the Action and file with the court proof, by affidavit or declaration, of the publication of the Notice and Summary Notice.

8. All Current Merit Stockholders shall be bound by all orders, determinations, and judgments in the Action concerning the Settlement, whether favorable or unfavorable to Current Merit Stockholders.

9. Pending final determination of whether the Settlement should be approved, no Current Merit Stockholders, either directly, representatively, or in any other capacity, shall commence or prosecute against any of the Individual Defendants or Merit, or derivatively on behalf of Merit, any action or proceeding in any court or tribunal asserting any of Plaintiff's Released Claims.

10. Neither the Stipulation (including any exhibits attached hereto) nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (i) is or may be deemed to be or may be offered, attempted to be offered or used in any way as a presumption, a concession or an admission of, or evidence of, the validity of any of Plaintiff's Released Claims, or of any fault, wrongdoing or liability of any of the Parties, Plaintiff's Counsel, Defendants' Counsel, Defendants' Released Persons or Plaintiff's Released Persons; or (ii) is or may be deemed to be or may be offered, attempted to be offered or used in any way as a presumption, a concession or an admission of, or evidence of, any fault, omission, wrongdoing or liability of any of the Parties, Plaintiff's Counsel, Defendants' Counsel, Defendants' Released Persons or Plaintiff's Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Parties, Plaintiff's Counsel, Defendants' Counsel, Defendants' Released Persons and Plaintiff's Released Persons may file the Stipulation and/or the Judgment in any action that may be brought, or has been brought, against them in order

to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. The court reserves the right to adjourn the date of the Settlement Hearing or modify any other dates set forth herein without further notice to Current Merit Stockholders, and it retains jurisdiction to consider all further applications arising out of or connected with the Settlement. The court may approve the Settlement and any of its terms, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to Current Merit Stockholders.

Based on the foregoing, the deadlines are as follows:

Due Dates	
Issuance of Company press release containing the contents of the Summary Notice	November 1, 2022
Filing of Notice via Form 8-K with the SEC	November 1, 2022
Posting of Notice on Merit's Website	November 1, 2022
Filing and service of all papers in support of the Settlement, including the Fee and Expense Award	January 26, 2023
Last day for Current Merit Stockholders to comment on the Settlement	February 2, 2023
Last day for counsel for Merit to file appropriate affidavit with respect to preparation and dissemination of Notice and Summary Notice	February 2, 2023
Filing of all reply papers in support of the Settlement, including responses to objections, if any	February 9, 2023
Final Settlement Hearing	February 16, 2023 3:30 pm

SO ORDERED this 18th day of October, 2022.

BY THE COURT:


 ROBERT J. SHELBY
 United States Chief District Judge